REMARKS

Claims 1, 47-64, 70, 74-81, 74-81, 86-97, 99, 100, 103, 104 and 114-127 are currently active.

The Examiner has placed a restriction requirement on the above-identified patent application. The Examiner has determined that there are five distinct inventions. Invention I has Claims 1, 47-56, 75-79, 103, 104 and 124-126. Invention II has Claims 67-64, 70 and 127. Invention III has Claim 74. Invention IV has Claims 80, 81, 86-93, 95, 97, 99 and 100. Invention V has Claims 114-123. Applicants elect Invention V having Claims 114-123 with traverse.

Applicants strongly traverse this restriction requirement. The Examiner has raised this restriction requirement after several years of prosecution including office actions, information disclosure statement submittals and discussions with the Examiner, as well as an issued parent patent that has similar issued claims to the currently active pending claims, where no restriction requirement was ever raised. It is respectfully submitted that the simple fact that so much work and time has been put into the prosecution of the above-identified patent application, now makes the sudden raising of a restriction requirement unfair and unjust, besides improper. Furthermore, all of the active claims have been allowed subject to a

rejection under 35 USC 112, where the Examiner simply questioned what structure was associated with claims having means plus function language. The last discussion with the Examiner was thought to have obviated this issue.

Besides the equitable basis for removing the restriction requirement, there is also specific reasons by law why this restriction requirement should be reconsidered and rescinded. A review of all of the independent claims of the five different inventions identified by the Examiner shows they all have common language which will dictate that the search by the Examiner will occur in the same classes and subclasses for all of the claims.

Claim 1 of Invention I has the limitation that the incubating means is a closed system which is dynamically controlled, and in which each individual cell of the plurality of cells can be individually examined over time.

Claim 57 of Invention II has the limitation that the incubating means is a closed system which is dynamically controlled, and in which each individual cell of the plurality of cells can be examined over time.

Claim 74 of Invention III has the limitation that the incubating means is a closed system which is dynamically controlled, and in which each individual cell of the plurality of cells can be examined over time.

Claim 80 of Invention IV has the limitation that the incubating means is a closed system which is dynamically controlled, and in which each individual cell of the plurality of cells can be examined over time.

Claim 114 of Invention V has the limitation of a biochamber being a closed system and the limitation of analyzing the state of each cell of the cells over time.

As is evident from the limitations of the independent claims of the five different inventions, a search by the Examiner is constrained to be in the same classes and subclasses because all of these claims must be analyzed for patentability based on these limitations.

It should further be noted that in regard to Claim 74, essentially the only difference it has from some of the other independent claims is the limitation of a stem cell. By placing Claim 74 as an independent invention with only this distinction, the Examiner is specifically stating that the presence of a stem cell is afforded substantive weight in regard to the structure found in Claim 74 and all things being equal, except for the presence of a stem

cell in some hypothetical piece of prior art, by definition because the Examiner has determined that Claim 74 is distinct, and if the restriction requirement is not rescinded, Claim 74 must be found patentable over such hypothetical piece of prior art. The U.S. Patent and Trademark Office cannot have it both ways, in the future, if it chooses to maintain the restriction requirement in regard to Claim 74 now, and then in the future argues that the stem cell should not have any patentable weight in regard to Claim 74.

It is further respectfully requested that if the Examiner does not withdraw the restriction requirement, the Examiner identify where a petition challenging the finality of the restriction requirement should be addressed, if applicants choose to further challenge the restriction requirement.

The Examiner is reminded of co-pending continuation patent application 10/114,892. An Information Disclosure Statement is submitted with this election with traverse.

In view of the foregoing remarks, it is respectfully requested that Claims 1, 47-64, 70, 74-81, 86-97, 99, 100, 103, 104 and 114-127, now in this application be allowed.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on 7/3/07

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